



## Environmental Issues

Superseded

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<b>Subject</b>	AES Agremax	<b>Location</b>	Street Address: City: Guayama State: PR Zip Code:
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The widespread land placement of "Agremax," an aggregate made of ash generated by the AES coal fired power plant in Guayama, Puerto Rico and sold as a "product" under a PR Environmental Quality Board (EQB) solid waste exemption, may present significant environmental and health risks from leaching heavy metals. The environmental group Earthjustice, on behalf of several PR environmental advocates, has urged the Region to address the issue through use of its imminent and substantial endangerment authority under RCRA Section 7003, and the national environmental group Public Justice has issued a notice of intent to sue AES under RCRA §7002, but has delayed taking suit.

### Notice of Intent to Sue

In September 2012, the environmental group Public Justice issued a notice of intent to sue AES under RCRA §7002 (please see attached), but has since delayed taking suit. EPA shares Public Justice's concerns. The notice of intent to sue, in fact, quotes extensively from EPA's November 2011 letter to EQB Chairman Nieves, which requested reconsideration of the EQB Resolutions and Notifications that provide the solid waste exemption for Agremax, to incorporate, among other things, risk evaluation and engineering controls.

### EQB

In a January 2012 reply to our November 2011 letter, Chairman Nieves stated that EQB was developing draft guidelines for the use of Agremax. EPA responded in February 2012, and indicated that it remained concerned with the ongoing use of Agremax in the absence of appropriate engineering controls. EQB subsequently gave EPA draft guidelines to review, and EPA provided comments in a July 2012 letter. EPA later spoke with EQB Chairman Nieves, and was informed that EPA's comments, along with others received from the public and regulated community, were being evaluated by an independent committee and could not be reviewed by EQB until the committee's review was completed. Chairman Nieves did not, however, know when this would occur.

Ex. 5 - Deliberative

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#### AES Well Field

Among EPA's concerns is potential leaching from Agremax deposited at an AES well field north of the AES Guayama generating facility (please see attached photographs). EPA notes that, beyond being located in a flood plain, the AES well field presents a number of potential environmental risk factors, because it is situated adjacent to wetlands and a surface water body, the Guaymani river (which EPA understands is used for subsistence fishing), as well as near a canal receiving and distributing water from nearby Lake Melania. It is also located, via the Guaymani River, upstream of several federally endangered species.

#### AES Negotiations

Region 2 met with AES in December 2012, and negotiations are ongoing with respect to future Agremax use and sampling of soil and groundwater at the Guayama facility and nearby well field.

Ex. 5 - Delib. Process, Attorney-Client, Attorney Work Prod.

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None, although we understand that P.R. senate hearings regarding Agremax were held in February 2012, and that AES P.R. has settled a lawsuit with the government of the Dominican Republic, which alleged that AES dumped coal ash from the AES Guayama facility along several beaches, causing adverse ecological and human health effects. (It should be noted that the alleged dumping occurred prior to the EQB designation of Agremax as a "product" for use in Puerto Rico.

In May 2010, EPA published a proposed rule to ensure the safe disposal and management of coal ash. Under the proposed rule, the Agency would continue to promote the beneficial reuses of coal ash, in which coal combustion residuals are recycled as components of products instead of being placed in impoundments or landfills. EPA has yet to issue a final rule, and, until a decision is made, EPA's prior determination that coal ash is a solid waste remains in force. However, no RCRA regulatory requirements for coal ash management currently exist, while states may, and in many cases have, made binding regulatory determinations on appropriate coal ash management practices.

In a September 2010 letter, representatives of the environmental group Earthjustice and a private citizen, Ms. Ruth Santiago, Esq., had requested that EPA look into the management of Agremax, stating that the relevant EQB beneficial use determination had been repealed, that Agremax had continued to be used inappropriately as fill, and that such use posed environmental threats. On this basis, they urged that EPA conduct groundwater and other monitoring. Our investigation of this issue was also supported by the Office of Resource Conservation and Recovery (coal combustion residuals rulemaking work group lead Alex Livniat, PhD). We subsequently confirmed that the EQB Resolutions and Notifications providing the Agremax solid waste exemption have been, and remain, in effect.

In June 2011, EPA met with the coal combustion product manager for AES P.R., who informed us that the Guayama coal fired power plant mixes all of its bottom and fly ash with the spent lime from its air pollution control equipment, to produce over 4,000 tons/week of Agremax. EPA accompanied several P.R. environmental advocates on site visits

We are aware of potentially analogous damage cases documented by EPA and others, involving coal ash disposal. A 2007 EPA report “Coal Combustion Waste Damage Case Assessments” documents known damage cases from the mismanagement of coal ash in unlined landfills and surface impoundments and the subsequent contamination of drinking water aquifers through the leaching and ground water transport of contaminants in the ash. Of these damage cases, two EPA Orders, issued in 2003 and 2004 under the Comprehensive Environmental Response, Compensation, and Liability Act, and a subsequent 2004 citizen suit taken under Section §7002 of the Resource Conservation and Recovery Act, address aquifer and well water contamination by the leaching of toxic constituents from an unlined coal ash landfill in Pines, Indiana.

In March 2012, EPA, accompanied by EQB, obtained a composite sample of "manufactured" Agremax stored at the AES Guayama facility. The composite sample was analyzed by an EPA-ORD contract laboratory, using two of the LEAF methods. The analytical results gave us a clearer understanding of the heavy metal levels in Agremax under a range of pH conditions. ORD stated that "Agremax" had contaminant levels no different than observed in a "typical" coal ash. ORD also performed follow-up analysis, which confirms these findings.

Date	Milestone
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